

51 Am. Jur. 2d Licenses and Permits § 4

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Licenses and Permits

Jill Gustafson, J.D.

I. Definition and Nature of License

§ 4. License fees as “taxes”

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West’s Key Number Digest

West’s Key Number Digest, [Licenses](#)  1, 28

A.L.R. Library

[Validity of state or municipal tax or license fee upon occupation of practicing law, 50 A.L.R.4th 467](#)

[Construction, application, and operation of state “retaliatory” statutes imposing special taxes or fees on foreign insurers doing business with the state, 30 A.L.R.4th 873](#)

[Validity and construction of license tax or fee, or business privilege or occupational tax, on persons renting or leasing out real estate, 93 A.L.R.2d 1136](#)

Forms

[Am. Jur. Pleading and Practice Forms, Licenses and Permits § 8](#) (Complaint, petition, or declaration—Challenging municipality’s determination of amount of gross receipts subject to tax—By taxpayer-licensee)

[Am. Jur. Pleading and Practice Forms, Licenses and Permits § 9](#) (Complaint, petition, or declaration—Challenging municipality’s assessment of license tax on income from wages or salary—Where ordinance provides for tax on gross receipts from practice of profession—By taxpayer-licensee)

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 246](#) (Complaint, petition, or declaration—By state—To recover unpaid business license tax)

When used in its broad sense, the word “taxes” may include a license fee.¹ Such fees may be imposed upon an occupation, business, or calling,² or the exercise of a privilege.³ A charge exacted for revenue purposes, or to offset the cost of general governmental functions, is generally held to be a “tax,” while a “licensing fee” is a sum collected principally as an integral part of the regulation of an activity and to cover the cost of the regulation.⁴

An “excise tax,” to the extent that it is within a legislature’s authority to enact, is a tax imposed upon engaging in an occupation.⁵

CUMULATIVE SUPPLEMENT

Cases:

The taxation of commercial services constitutes an “occupation tax” which is constitutionally prohibited unless sanctioned by the legislature. *S.H.A. Const. Art. 7, § 6(e)*. *Midwest Gaming and Entertainment, LLC v. County of Cook*, 2015 IL App (1st) 142786, 395 Ill. Dec. 819, 39 N.E.3d 286 (App. Ct. 1st Dist. 2015).

[END OF SUPPLEMENT]

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Footnotes

- ¹ *Paramount Film Distributing Corp. v. Tracy*, 175 Ohio St. 55, 23 Ohio Op. 2d 352, 191 N.E.2d 839 (1963).
- ² *American Beverage Ass’n v. City of Chicago*, 404 Ill. App. 3d 682, 344 Ill. Dec. 555, 937 N.E.2d 261 (1st Dist. 2010), appeal denied, 239 Ill. 2d 549, 348 Ill. Dec. 189, 943 N.E.2d 1099 (2011); *City of Terre Haute v. Kersey*, 159 Ind. 300, 64 N.E. 469 (1902); *Madden v. Queens County Jockey Club*, 296 N.Y. 249, 72 N.E.2d 697, 1 A.L.R.2d 1160 (1947); *Draughon v. Fox-Pelletier Corp.*, 174 Tenn. 457, 126 S.W.2d 329 (1939).
- ³ *El Paso Apartment Ass’n v. City of El Paso*, 2011 WL 811680 (5th Cir. 2011) (applying Texas law); *Tax Appeal of Baker & Taylor, Inc. v. Kawafuchi*, 103 Haw. 359, 82 P.3d 804 (2004); *Stone v. Fritts*, 169 Ind. 361, 82 N.E. 792 (1907); *Automobile Gasoline Co. v. City of St. Louis*, 326 Mo. 435, 32 S.W.2d 281 (1930); *Nebraska Telephone Co. v. City of Lincoln*, 82 Neb. 59, 117 N.W. 284 (1908); *Wingfield v. South Carolina Tax Commission*, 147 S.C. 116, 144 S.E. 846 (1928); *Shawnee Bank, Inc. v. Paige*, 200 W. Va. 20, 488 S.E.2d 20 (1997).
- ⁴ *Health Services Medical Corp. of Cent. New York, Inc. v. Chassin*, 175 Misc. 2d 621, 668 N.Y.S.2d 1006 (Sup 1998), aff’d, 259 A.D.2d 1053, 689 N.Y.S.2d 875 (4th Dep’t 1999).
As to the amount of imposition, see §§ 38 to 41.
- ⁵ *Airlines Parking, Inc. v. Wayne County*, 452 Mich. 527, 550 N.W.2d 490 (1996); *Covell v. City of Seattle*, 127 Wash. 2d 874, 905 P.2d 324 (1995).
As to the distinction between excise taxes and license taxes, see *Am. Jur. 2d, State and Local Taxation* § 25.